



C.M.A. (MD) No. 1458 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1458 of 2012

1.N.Sethuraman

2.S.Raja Sulochana

... Appellants/ Petitioners

Vs.

1.The General Manager

Tamilnadu State Transport Corporation Ltd

Kumbakonam Limited Karaikudi Region,

Karaikudi.

2. S.Shanmugam

3. K.Shanmuga Velu

... Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 31.01.2007 made in M.A.C.T.O.P.No.158 of 2005 on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram.

For Appellants : Mr.S.A.Ajmal Khan

For R1 : Mr.N.Rahamadullah

For R2 & R3 : Dismissed for default



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.A.C.T.O.P.No.158 of 2005 on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram, wherein the appellants / petitioners herein have filed the claim petition for a sum of Rs.3,00,000/- as against the respondents herein. The Tribunal had awarded a sum of Rs.50,000/- as compensation along with interest @ 7.5% per annum.

2. Being aggrieved by the above said order, of the Tribunal the petitioners have filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition averments are as follows:

On 24.10.2004 at about 6.15 p.m., when the deceased – Sathishkumar along with one Shanmugam were proceeded in a motorcycle bearing Registration No. TN-65-C-5203 from Madurai to Madapam Road,



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at that time, the driver of the bus bearing Registration No. TN-65-N-0865 belonged to the first respondent, was also proceeding towards opposite side in a rash and negligent manner and dashed against the motorcycle. Due to the said accident, the deceased – Sathishkumar sustained grievous injuries and died on the spot. The accident took place due to the negligence on the part of the driver of the first respondent. At the time of accident, the deceased was aged about 20 years and was running an Iron Shop and was earning Rs.3,500/- per month. Hence the petitioners, who are the legal heirs of the deceased, have filed the claim petition for claiming compensation for a sum of Rs.3,00,000/-.

5. The brief facts of counter filed by the first respondent are as follows:

The accident took place only due to the rash and negligent driving on the part of the bus driver and the accident took place due to the negligence on the part of the second respondent, who ride the vehicle in a rash and negligent manner. Therefore, the first respondent is no way responsible to pay compensation.



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6. The brief facts and counter filed by the second respondent

are as follows:

This respondent had licence to drive the vehicle on the date of accident. The accident took place only due to the negligence on the part of the driver of the first respondent. F.I.R has been registered as against this respondent, based on the false complaint given by one Velusamy. Therefore, the first respondent alone is liable for the accident.

7 The brief facts of counter filed by the third respondent are

as follows:

The third respondent also filed counter by reiterating averments of the counter filed by the second respondent.

8. Inorder to prove the case of the petitioners, the first petitioner examined himself as P.W.1 and one Velusamy was examined as P.W.2 and 9 documents were marked as Exs.P.1 to Ex.P.9 and on the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and no documents were marked.



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9. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.50,000/- towards compensation with interest at the rate of 7.5 % p.a. from the date of accident till the date of realization.

10. As against the award passed by the Tribunal, the claimants have preferred this appeal for enhancing the compensation amount, on various grounds.

11. The learned counsel appearing for appellants/claimants would contend that the deceased -Sathishkumar was aged about 20 years on the date of accident and he was earning Rs.3,500/- per month, but the Tribunal fixed at Rs.3,000/- per month. The Tribunal applied multiplier '13' by taking the age of the mother of the deceased and fixed a sum of Rs.1,56,000/- towards loss of income. Apart from that a sum of Rs.10,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,000/- towards other expenses. But, while awarding compensation, only awarded an amount of Rs.50,000/- without any basis.



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12. The learned counsel appearing for the first respondent would contend that the Tribunal has taken income of the deceased as Rs.1,000/- and thereby, calculated the amount and also restricted the first respondent to pay a sum of Rs.50,000/-. After arriving compensation, since no relief is sought for as against the respondents 2 and 3, the Tribunal reduced the compensation amount as Rs.50,000/- and thereby, the appeal is liable to be dismissed.

13. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

14. In this case, there is no dispute with regard to the negligence on the part of the driver of first respondent and the Tribunal has fixed the negligence on the part of the driver of the first respondent and the first respondent has not filed any appeal as against the findings of the Tribunal with regard to the negligence. The petitioners' side evidence also reveals that the accident took place due to the negligence on the part of the first



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respondent's driver. Therefore, there is no dispute with regard to the negligence.

15. The petitioners / appellants have filed this present appeal, challenging the quantum of award passed by the Tribunal. The appellants / petitioners have claimed a sum of Rs.3,00,000/- and thereafter, they restricted their claim to Rs.2,00,000/- only. The Tribunal awarded a sum of Rs.1,56,000/- towards loss of income and also .Rs.10,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,000/- towards other expenses. But, the Tribunal without any basis wrongly awarded Rs.50,000/-. Therefore, the award passed by the Tribunal is liable to be set aside.

16. Though the appellants / petitioners themselves restricted the claim for Rs.2,00,000/- and only sought for claim of Rs.3,00,000/-, this Court is inclined to award the entire claim as per law, considering the facts and circumstances of the case and age and dependency of the deceased. According to the petitioners, the deceased was aged 20 years and considering the age of the deceased, this Court has taken the income



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of the deceased at Rs.2,500/-per month, including the future prospects.

Since the deceased was a bachelor, 50% (Rs.1,250/-) of the income has to be deducted for personal expenses. Considering the age of the deceased, multiplier '18' is to be adopted. After applying multiplier '18', the loss of income fixed at Rs.2,70,000/- (Rs.1,250/- X 12 X18). Apart from that the petitioners / appellants are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the petitioners / appellants are entitled to Rs.3,00,000/-. The petitioners / appellants are entitled for compensation as follows:

1.	Loss of income	Rs. 2,70,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-
	Total	Rs.3,00,000/-

17. In fine, the petitioners / appellants are entitled to a sum of Rs.3,00,000/- towards compensation with interest at the rate of 7.5% pa. from the date of claim petition till the date of realization. The petitioners/ appellants are entitled for the award amount equally with proportionate interest and costs.



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18. In the result this Civil Miscellaneous Appeal is allowed and the order passed by the Tribunal in M.A.C.T.O.P.No.158 of 2005 is modified to the effect that the petitioners / appellants are entitled for a sum of Rs.3,00,000/- as compensation with interest at the rate of 7.5% pa. The first respondent /Tamil Nadu State Transport Corporation is directed to deposit the entire award amount along with interest at the rate of 7.5% , from the date of claim petition till the date of realization, within period of two months from the date of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the petitioners / appellants are permitted to withdraw their share amount together with proportionate interest and costs by filing application before the Tribunal. The claimants / appellants are directed to pay the balance court fee for the modified enhanced award amount. No costs.

23.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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P. DHANABAL, J.

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To:

1. The Motor Accident Claims Tribunal –
Principal District Judge,
Ramanathapuram. .
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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